



## 1.0 PURPOSE

- 1.1 This policy provides a guideline to the exercise of the Council's statutory discretion on the provision of public open space. As such it does not bind the exercise of those discretions in any particular case. Council or its delegate must determine each application which is lodged on its merits and in accordance with the provisions of the *Land Use Planning & Approvals Act 1993* and the *Local Government (Building & Miscellaneous Provisions) Act 1993*. Council or its delegate may in individual cases apply this guideline to the exercise of its statutory discretions.
- 1.2 The purpose of this Policy is to:
- (a) Establish guidelines that will assist Council in determining the appropriateness of levying a public open space contribution on subdivisions;
  - (b) Establish parameters for determining whether a contribution should be taken in the form of land or cash in lieu payment from subdivision developments; and
  - (c) Specify requirements for the holding and disposal of monies derived from cash in lieu contributions.

## 2.0 OBJECTIVES

- 2.1 There are clear guidelines to assist Waratah-Wynyard Council, private landowners and developers to understand the public open space contribution process.
- 2.2 Waratah-Wynyard Council has an equitable and consistent approach to the assessment and application of conditions for public open space contributions.
- 2.3 The circumstances under which Waratah-Wynyard Council will require provision of public open space to be in the form of a land contribution and where a cash in lieu contribution will be required instead are clearly outlined.

## 3.0 SCOPE

- 3.1 This policy applies to all applications for subdivisions in the General Residential, Low Density Residential, Village and Rural Living zones that could result in an increase in demand for public open space.
- 3.2 This policy does not apply to boundary adjustments where no new lots are created, subdivision for public utilities, or for land divided under the *Strata Titles Act 1998*.



**4.0 POLICY**

**4.1 Principles - General**

The following principles apply when determining if a public open space contribution is to be taken:

- (a) All subdivision creating new lots will contribute to an increased demand for open space, however the location/size/purpose of specific subdivisions will mean that such demand will vary.
- (b) The taking of cash in lieu is to be the preferred option for public open space contribution.
- (c) Where public open space is accessible to the residents of a proposed subdivision, a cash in lieu contribution should generally be required to provide for the upgrading or enhancement of that open space.
- (d) Open space that seeks to protect or conserve land that is deemed to be of high environmental value is to be given priority as public open space.
- (e) A contribution for public open space is based on a contribution not exceeding one twentieth of the subdivision land area, or one twentieth of the value of all new lots created by subdivision.
- (f) Land that has been set aside for riparian or littoral reserves on the plan is deducted from this calculation.
- (g) In the event Council requires a greater contribution than one twentieth of the subdivision land area for public open space, Council will be required to purchase the additional land in accordance with sections 116 and 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.
- (h) The appropriateness of a requirement for public open space will also be appraised having regard to the objectives of any adopted recreation policy. Where specified, the above standards for the provision of open space may be applied in establishing the basis for the setting of public open space contributions on subdivisions.
- (i) Waratah-Wynyard Council will work with the subdivider to identify the most appropriate location for any public open space land contribution but the final determination of the location and boundaries of the public open space in the subdivision is up to Council.

**4.2 Principles – Land Contribution**

4.2.1 A contribution taken in land will be considered where one or more of the following apply:

- (a) There is an identified deficiency of public open space in the vicinity of the land being subdivided and part of the land is suitable for public open space in terms of useable shape and area, topography, other physical characteristics and

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**PUBLIC OPEN SPACE CONTRIBUTION POLICY**

accessibility and safety for the public.

- (b) The taking of the land as public open space will facilitate the conservation of a significant natural or cultural heritage feature of the land for the benefit of the community.
- (c) The land or part thereof will facilitate linkages between public lands as part of an open space network.
- (d) The land is identified in a public open space strategic document as a priority for acquisition and/or acquisition of the land would further the objectives of an open space policy adopted by Council.
- (e) The open space area is required as a stormwater retention basin on site. Apart from provision for littoral and riparian reserves as provided for in the *Local Government (Building and Miscellaneous Provisions) Act 1993*, land set aside as a stormwater retention basin will not be deemed as satisfying a public open space requirement unless the land also exhibits adequate value to the public in accordance with the above specifications.

4.2.2 The developer may be subject to weed management, rubbish clearing, erosion control, landscaping, rehabilitation, fence construction, access control or other land management requirements on the subject land, prior to transfer of the land to Waratah-Wynyard Council.

4.2.3 If a land transfer is to occur, it must occur at the time of the sealing of the Final Plan, or in a staged subdivision, as part of the first stage.

**4.3 Principles – Cash Contribution**

As an alternative to taking the public open space contribution in land, Council may require all or part of the contribution to be provided as cash in lieu. The following principles apply when determining if a cash contribution in lieu of land is to be taken as a public open space requirement:

- (a) Where public open space is accessible to the residents of a proposed subdivision, a cash in lieu contribution should generally be required to provide for the upgrading or enhancement of that open space
- (b) Cash in lieu of a public open space land contribution may also be required where the subdivision proposal does not include a public open space land contribution, or the public open space land area proposed is less than five percent of the subdivision area.
- (c) A contribution for public open space is based on a contribution not exceeding one twentieth of the value of all new lots created by subdivision.
- (d) The amount of a cash contribution will be determined by a valuation undertaken by a suitably qualified property valuer. The cost of the valuation must be borne by the subdivider.
- (e) Per s116(6) *Local Government (Building and Miscellaneous Provisions) Act 1993*, land is to be valued as at the date of lodgement of the plan of subdivision.



- (f) A contribution less than one twentieth of the value of all new lots created by subdivision may also be taken. This contribution may be taken as cash in lieu or as land.
- (g) The cash in lieu of land must be paid prior to the sealing of the Final Plan of Subdivision.
- (h) Such monies must be held in trust and used to further strategic purchase or improvement of land(s) dedicated to public open space in the municipal area.

#### 4.4 Principles - Requiring a lesser Public Open Space Contribution

- 4.4.1 Where deemed appropriate, Council may determine that a public open space contribution of less than one twentieth of the value of the land being subdivided is appropriate. This may occur where it is considered that land being subdivided is in a municipal area that is adequately provided with open space areas that do not require improvement.
- 4.4.2 Consideration of acquiring less than one twentieth may also be supported where the subdivider provides on the public open space capital improvements that increase the utility or quality of the land as public open space.

#### 5.0 LEGISLATION AND RELATED DOCUMENTS

*Local Government Act 1993*  
*Local Government (Building & Miscellaneous Provisions) Act 1993*  
*Land Use Planning & Approvals Act 1993*  
*Tasmanian Planning Scheme – Waratah-Wynyard*  
Liveable Waratah-Wynyard Settlement Strategy 2021 and Appendices  
Cam River Reserve Master Plan 2020  
Open Space Sport & Recreation Plan 2017-2027  
Open Space Sport & Recreation Plan 2017-2027 - Frederick Street Precinct Masterplan  
Open Space Sport & Recreation Plan 2017-2027 – Masterplans  
Open Space Sport & Recreation Plan 2017-2027 - Wynyard Recreation Precinct Master Plan  
Public Open Space Policy Guidelines

#### 6.0 RESPONSIBILITY

- 6.1 The consideration of this policy during the assessment of all subdivision applications is the responsibility of the Manager Development and Regulatory Services.
- 6.2 Council is the responsible body for ensuring decisions made at Council meetings are consistent with the objectives of the policy.

#### 7.0 MINUTE REFERENCE

#### 8.0 COUNCIL MEETING DATE

24 July 2023

## 1.0 BACKGROUND

- 1.1 The term 'public open space' is defined in Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* as 'space for public recreation or public gardens or for similar purposes.'
- 1.2 Under the *Local Government Act 1993*, public open space is not defined however public land is defined as:  
*'a public pier or public jetty, any land that provides health, recreation, amusement or sporting facilities for public use, any public park or garden, any land acquired under this Act for the purpose of establishing or extending public land, any land shown on a subdivision plan as public open space that is acquired by a council under the Local Government (Building and Miscellaneous Provisions) Act 1993 and any other land that the council determines is public land.'*
- 1.3 Both the *Local Government (Building and Miscellaneous Provisions) Act 1993* and the Tasmanian Planning Scheme – Waratah-Wynyard grant Waratah-Wynyard Council the authority to require public open space land or cash in lieu contributions from developers.
- 1.4 Waratah-Wynyard Council has an obligation to provide a diverse range of recreation opportunities as:  
*'Open space and sporting facilities provide clear benefits for users...these benefits as a whole include those related to physical and social activity, mental health, wellbeing and spirituality, environmental benefits, civic pride and economic benefits'*  
(Open Space Sport & Recreation Plan 2017-2027).

## 2.0 GUIDELINES IN DETERMINING A REQUIREMENT FOR PUBLIC OPEN SPACE CONTRIBUTION

- 2.1 Section 85 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* determines that Council may refuse to approve a subdivision plan if it is of the opinion that the layout of the plan should be altered to either include or omit an area of public open space.
- 2.2 If Council determines that public open space is not required on plan, nor required in the municipal area then a requirement for such (including cash in lieu requirement) cannot be made of the developer.
- 2.3 If Council determines that an area of public open space is required in the municipal area, then the contribution is dealt with under Sections 116 and 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* and consent conditions of planning permit applied under the *Land Use Planning & Approvals Act 1993*.
- 2.4 Sections 116 and 117 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* enable Council to require, as a consent condition to residential subdivision in the municipal area, that the developer provides land or a cash in lieu contribution towards the 'increased' provision of public open space.
- 2.5 Section 117 enables Council to require, as a consent condition to a planning permit,

**PUBLIC OPEN SPACE CONTRIBUTION POLICY GUIDELINES**

a payment in lieu of an increase in the area shown for public open space, instead of requiring an increase in the public open space land area. Such monies must be held in trust and used to further strategic purchase or improvement of land(s) dedicated for public open space in the municipality.

- 2.6 Section 117(5) of the stipulates that the *'amount payable is to be for the acquisition or improvement of land for public open space for the benefit of inhabitants of the municipal area'*. The words 'municipal area' are defined in Section 3 of the *Local Government Act 1993* as "an area referred to in Section 16" which provides for the division of the State of Tasmania into municipal areas, such as Waratah-Wynyard.

**REVIEW**

This policy will be reviewed every five years, unless organisational and legislative changes require more frequent modification.

DOC NO: LUP.001	VERSION NO: 1	APPROVAL DATE: 24 July 2023	Page 2 of 2
CONTROLLER: General Manager	APPROVED BY: Council	REVIEW DATE: 24 July 2028	